existed in the past. The sovereign who created the marriage is the most natural one for the law to clothe with such jurisdiction. The question being whether or not he has done something, it is more reasonable to expect others to take his word for it than to ask him to take the word of another as conclusive. Furthermore, the decision of the question involves the determination of the previous state of his law, as to which he has the most authoritative information. There is, no doubt, a certain hardship in forcing the parties to return to the place where the marriage ceremony occurred to discover whether or not they are really married. If, however, the sovereign of the domicile is impressed with this hardship he can dissolve by a decree of divorce the foreign marriages of his citizens which he believes to be void. Moreover, whatever may be desirable from the point of view of the parties, it seems impossible to conceive of international law as insisting that one sovereign shall allow another to determine for him what his acts have been.

The cases offer very little assistance in determining whether or not this view can be regarded as correct. By the weight of authority no decree of nullity which is not based on the law that created the marriage will be recognized by the courts which administer that law.[9] Beyond this no theory of the requisites for jurisdiction has been definitely worked out. There is a tendency, however, in the courts of the state where the parties reside,[10] as well as those where the marriage has been created,[11] to assert jurisdiction.

THE NATURE AND EFFECT OF DURESS. — If a person's hand be taken forcibly and compelled to hold a pen and write, it cannot be said that the writing is his act, since there is no expression of the will.[1] But where an act is compelled by threats only it seems impossible to contend that the act done is not the act of the person threatened; he in fact consents to do the act rather than submit to the alternative threatened.[2] Accordingly it is generally held that a contract or a deed executed under duress is voidable rather than void,[3] and that duress is of no avail against

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[9] Simonin *v.* Mallac, 2 Sw. & Tr. 67; Cummington *v.* Belchertown, *supra*; Ogden *v.* Ogden, *supra*. *Contra*, Roth *v.* Roth, *supra*.

[10] Jurisdiction was held to exist on the ground of domicile or residence in the following cases: Johnson *v.* Cooke, [1898] 2 Ir. 130; Roberts *v.* Brennan, [1902] P. 143; Roth *v.* Roth, *supra*; Barney *v.* Cuness, *supra*; Avakian *v.* Avakian, *supra*. See also Bater *v.* Bater, [1906] P. 209, 220. The Irish and Illinois decisions are perhaps based on the theory that the law of the domicile creates the marriage. The Vermont case rests on the supposed similarity between annulment and divorce. The other decisions are apparently due to the theory that it is inconvenient to force the parties to return to the state of creation to have their status determined.

[11] The following cases hold that the state where the marriage took place has jurisdiction. Sottomayer *v.* De Barros, 3 P. D. 1; Linke *v.* Van Aerde, 10 T. L. R. 426; Ogden *v.* Ogden, *supra*. In one case the court which created the marriage denied its own jurisdiction to annul it. Blumenthal *v.* Tannenholz, 31 N. J. Eq. 194.

[1] See HOLLAND, ELEMENTS OF JURISPRUDENCE, 8 ed., 93, 94.

[2] Fairbanks *v.* Snow, 145 Mass. 153, 13 N. E. 596. See TERRY, LEADING PRINCIPLES OF ANGLO-AMERICAN LAW, 67, 68.

[3] National Bank *v.* Wheelock, 52 Oh. St. 534.

an innocent obligee,[4] or against a *bonâ fide* purchaser of a negotiable instrument [5] or land.[6]

Though an act committed under duress be a legal act, it does not follow that there should be attached to it all the consequences which would ordinarily attend such an act.[7] Criminal liability, which ordinarily follows certain acts, may not follow these acts if committed under duress.[8] And it is obviously unjust to allow an obligee who by duress induces a contract to hold the obligor. Formerly the common law was very strict in limiting the class of threats which would constitute duress sufficient even for the avoidance of the contract. Duress *per minas* was confined to "fear of loss of life, of loss of member, of mayhem, of imprisonment." [9] Clearly only pressure of the gravest description should serve as justification for a crime.[10] And where the act done affects third parties it seems reasonable that the duress which should furnish an excuse for the act must be severe.[11] But as between the parties there seems no basis for such stringency. The modern American view has given to duress in such cases a much broader application, including fear of less serious personal wrongs,[12] and of the exercise of unlawful control of property,[13] such pressure being regarded as sufficient to overcome the will of a person of ordinary firmness.[14] It is probable that when an external standard is applied it is meant that the alternative threatened must be so burdensome to the average man as to cause a man of ordinary resistance to submit.[15] And further, there is a tendency to disregard the external standard, and to allow the contract to be avoided if the alternative be so disagreeable because of the peculiarity of the individual that it exerts an amount of pressure on him sufficient to cause his submission.[16] The most reasonable view would seem to be, that, given a threat of improper action and a contract induced by it, there should in every case be grounds of avoidance. Otherwise the person exercising the threat is allowed to profit by his own wrong.

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[4] Fairbanks *v.* Snow, *supra*. *Cf.* Rogers *v.* Adams, 66 Ala. 600. See BACON'S ABRIDGMENT, DURESS, B.

[5] Clark *v.* Pease, 41 N. H. 414; Lane *v.* Schlemmer, 114 Ind. 296, 15 N. E. 454. See 9 HARV. L. REV. 57, 58. But *cf.* Barry *v.* Equitable Life Assurance Society, 59 N. Y. 587.

[6] Defuty *v.* Stapleford, 19 Cal. 302.

[7] See HOLLAND, ELEMENTS OF JURISPRUDENCE, 8 ed., 94.

[8] Rex *v.* Crutchley, 5 C. & P. 133.

[9] See 2 COKE, INSTITUTES, 483; BACON'S ABRIDGMENT, DURESS, A. Blackstone's definition of duress does not include fear of imprisonment. See 1 BL. COMM. 130.

[10] Respublica *v.* M'Carty, 2 Dall. (U. S.) 86.

[11] It seems doubtful whether duress of any description is a defense to an action of tort. See HOLMES, THE COMMON LAW, 148, 149.

[12] See Foshay *v.* Ferguson, 5 Hill (N. Y.) 154, 158.

[13] Oliphant *v.* Markham, 79 Tex. 543, 15 S. W. 569; Spaids *v.* Barrett, 57 Ill. 289. The English cases refuse to recognize duress of property as ground for avoiding a contract. Atlee *v.* Backhouse, 3 M. & W. 633; Skeate *v.* Beale, 11 A. & E. 983. But they allow a recovery of money paid to obtain property wrongfully detained. Oates *v.* Hudson, 6 Exch. 346. See WILLISTON, WALD'S POLLOCK ON CONTRACTS, 731, 732.

[14] See Miller *v.* Miller, 68 Pa. 486, 493; Spaids *v.* Barrett, *supra*; United States *v.* Huckabee, 16 Wall. (U. S.) 414, 431, 432.

[15] See Galusha *v.* Sherman, 105 Wis. 263, 274, 81 N. W. 495, 499.

[16] *Cf.* Galusha *v.* Sherman, 105 Wis. 263, 280, 281, 81 N. W. 495, 501; Silsbee *v.* Webber, 171 Mass. 378, 50 N. E. 555.

Under any theory the threat must be improper or there would be no reason for a defense, regardless of the amount of pressure exerted. A recent case holds that the threat of prosecution for a crime in fact committed constitutes such duress as to justify the avoidance of the contract. *Wilbur* v. *Blanchard*, 126 Pac. 1069 (Idaho). Some courts have held that since the prosecution is lawful no wrong is threatened and hence there is no duress.[17] Others, however, in accord with the principal case, have decided, it would seem correctly, that such a threat affords sufficient grounds for avoiding a contract induced thereby.[18] For although the alternative threatened, the prosecution itself, is not illegal, still such a use thereof is improper as a manifest perversion of the machinery of the criminal law to a purpose for which it was not intended.

DELEGATION OF THE TAXING POWER. — Perhaps no principle is more characteristic of our political system than the doctrine that there shall be no taxation without representation.[1] Long and bitter controversies between the people and the Crown made this a fundamental rule of English law.[2] Accordingly, after the American Revolution the states uniformly adopted constitutions which vested the taxing power primarily in legislative bodies.[3] But the refusal of Parliament to recognize the logical development of this doctrine, that only the local legislature should impose the local taxes, had been one of the chief causes of the Revolution.[4] As a logical consequence it has uniformly been held that the power to tax for local purposes and within local boundaries may be properly delegated to municipal corporations.[5] Many states have so provided in their constitutions.[6] With this exception, however, the taxing power,

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[17] Eddy *v.* Herrin, 17 Me. 338; Compton *v.* Bunker Hill Bank, 96 Ill. 301.

[18] Morse *v.* Woodworth, 155 Mass. 233, 29 N. E. 525; Hartford Fire Ins. Co. *v.* Kirkpatrick, 111 Ala. 456, 20 So. 651. These cases are readily distinguishable from the case where a settlement of a debt is made to escape civil imprisonment for the debt. Clark *v.* Turnbull, 47 N. J. L. 265. It is generally held that the doctrine of *in pari delicto* does not apply where one of the parties acted under duress. Bryant *v.* Peck and Whipple Co., 154 Mass. 460, 28 N. E. 678. See WILLISTON, WALD'S POLLOCK ON CONTRACTS, 503. *Contra*, Haynes *v.* Rudd, 102 N. Y. 372, 7 N. E. 287.

[1] See 1 COOLEY, TAXATION, 3 ed., 99; GRAY, LIMITATIONS OF THE TAXING POWER, § 534. This does not go so far as to exempt the property of women, children, and non-residents from taxation because they have no vote. See Thomas *v.* Gay, 169 U. S. 264, 276, 18 Sup. Ct. 340, 345. In the District of Columbia, also, the exclusive power of Congress includes the power to tax. Parsons *v.* District of Columbia, 170 U. S. 45, 18 Sup. Ct. 521; Bowman *v.* Ross, 167 U. S. 548, 17 Sup. Ct. 966.

[2] Bate's Case, 2 Cobbett's State Trials, 371; Hampden's Case, 3 Cobbett's State Trials, 825.

[3] For a collection of these provisions see GRAY, LIMITATIONS OF THE TAXING POWER, §§ 583–615.

[4] See 1 COOLEY, TAXATION, 3 ed., 96.

[5] See Vallelly *v.* Board of Park Commissioners, 16 N. D. 25, 32, 111 N. W. 615, 618; State *v.* Mayor, etc. of Des Moines, 103 Ia. 76, 82, 72 N. W. 639, 641.

[6] The following constitutions, for example, provide that the power may be delegated to "corporate authorities": Cal., Colo., Idaho, Ill., Mo., Mont., Neb., S. C., S. D., Utah, Wash., W. Va. See GRAY, LIMITATIONS OF THE TAXING POWER, §§ 560–563 *a*. Several states have also provided in their constitutions that questions of taxation may